deems necessary to maintain the reserve ratio of an insurance fund at the designated reserve ratio for that fund. Any such adjustment shall apply uniformly to each rate in the base assessment schedule. In no case may such adjustments result in an assessment rate that is mathematically less than zero or in a rate schedule for an insurance fund that, at any time, is more than 5 basis points above or below the base assessment schedule for that fund, nor may any one such adjustment constitute an increase or decrease of more than 5 basis points. The adjustment for any semiannual period for a fund shall be determined by:

(i) The amount of assessment revenue necessary to maintain the reserve ratio at the designated reserve ratio; and

(ii) The assessment schedule that would generate the amount of revenue in paragraph (c)(1)(i) of this section considering the risk profile of the institutions required to pay assessments to the fund.

(2) *Amount of revenue.* In determining the amount of assessment revenue in paragraph (c)(1)(i) of this section, the Board shall take into consideration the following:

(i) Expected operating expenses of the insurance fund;

(ii) Case resolution expenditures and income of the insurance fund;

(iii) The effect of assessments on the earnings and capital of the institutions paying assessments to the insurance fund; and

(iv) Any other factors the Board may deem appropriate.

(3) *Adjustment procedure.* Any adjustment adopted by the Board pursuant to this paragraph (c) will be adopted by rulemaking. Nevertheless, because the Corporation is generally required by statute to set assessment rates as necessary (and only to the extent necessary) to maintain or attain the target designated reserve ratio, and because the Corporation must do so in the face of constantly changing conditions, and because the purpose of the adjustment procedure is to permit the Corporation to act expeditiously and frequently to maintain or attain the designated reserve ratio in an environment of constant change, but within set parameters not exceeding 5 basis

points, without the delays associated with full notice-and-comment rulemaking, the Corporation has determined that it is ordinarily impracticable, unnecessary and not in the public interest to follow the procedure for notice and public comment in such a rulemaking, and that accordingly notice and public procedure thereon are not required as provided in 5 U.S.C. 553(b). For the same reasons, the Corporation has determined that the requirement of a 30-day delayed effective date is not required under 5 U.S.C. 553(d). Any adjustment adopted by the Board pursuant to a rulemaking specified in this paragraph (c) will be reflected in an adjusted assessment schedule set forth in paragraph (b)(2) or (b)(3) of this section, as appropriate.

(4) *Announcement.* Except with respect to assessments for the first semiannual period of 1997, the Board shall announce the semiannual assessment schedule and the amount and basis for any adjustment thereto not later than 30 days before the invoice date specified in § 327.3(c) for the first quarter of the semiannual period for which the adjustment shall be effective.

(d) *Refunds or credits of certain assessments.* If the amount paid by an institution for the regular semiannual assessment for the second semiannual period of 1996 exceeds, as a result of the reduction in the rate schedule for a portion of that semiannual period, the amount due from the institution for that semiannual period, the Corporation will refund or credit any such excess payment and will provide interest on the excess payment in accordance with the provisions of § 327.7. Notwithstanding § 327.7(a)(3)(ii), such interest will accrue beginning as of October 1, 1996.

[61 FR 67696, Dec. 24, 1996, as amended at 62 FR 27176, May 19, 1997; 64 FR 70181, Dec. 16, 1999]

§ 327.10 Interpretive rule: Section 7(b)(2)(A)(v).

This interpretive rule explains certain phrases used in section 7(b)(2)(A)(v) of the Federal Deposit Insurance Act, 12 U.S.C. 1817(b)(2)(A)(v).

(a) An institution classified in supervisory subgroup B or C pursuant to § 327.4(a)(2) exhibits ''financial, operational, or compliance weaknesses

ranging from moderately severe to un-satisfactory'' within the meaning of such section 7(b)(2)(A)(v).

(b) An institution classified in cap-ital group 2 or 3 pursuant to § 327.4(a)(1) is ''not well capitalized'' within the meaning of such section 7(b)(2)(A)(v).

[61 FR 67698, Dec. 24, 1996]

Subpart B—Insured Depository In-stitutions Participating in Sec-tion 5(d)(3) Transactions

§ 327.31 Scope.

(a) *Affected institutions.* This subpart B applies to any insured depository in-stitution that:

(1) Is either a BIF or SAIF member; and

(2) Is the assuming, surviving, or re-sulting institution in a transaction un-dertaken pursuant to section 5(d)(3) of the Federal Deposit Insurance Act.

(b) *Duration.* This subpart B shall cease to apply to an insured depository institution if:

(1) On or after August 9, 1994, the Cor-poration approves an application by an insured depository institution to treat the transaction described in paragraph (a) of this section as a conversion transaction; and

(2) The insured depository institution pays the amount of any exit and en-trance fee assessed by the Corporation with respect to such transaction.

[57 FR 45286, Oct. 1, 1992, as amended at 59 FR 67165, Dec. 29, 1994]

§ 327.32 Computation and payment of assessment.

(a) *Rate of assessment*—(1) *BIF and SAIF member rates.* (i) Except as pro-vided in paragraph (a)(2) of this sec-tion, and consistent with the provi-sions of § 327.4, the assessment to be paid by an institution that is subject to this subpart B shall be computed at the rate applicable to institutions that are members of the primary fund of such institution. (ii) Such applicable rate shall be applied to the institu-tion's assessment base less that por-tion of the assessment base which is equal to the institution's adjusted at-tributable deposit amount.

(2) *Rate applicable to the adjusted at-tributable deposit amount.* Notwith-standing paragraph (a)(1)(i) of this sec-tion, that portion of the assessment base of any acquiring, assuming, or re-sulting institution which is equal to the adjusted attributable deposit amount of such institution shall:

(i) Be subject to assessment at the assessment rate applicable to members of the secondary fund of such institu-tion pursuant to subpart A of this part; and

(ii) Not be taken into account in computing the amount of any assess-ment to be allocated to the primary fund of such institution.

(3) *Adjusted attributable deposit amount.* An insured depository institu-tion's ''adjusted attributable deposit amount'' for any semiannual period is equal to the sum of:

(i) The amount of any deposits ac-quired by the institution in connection with the transaction (as determined at the time of such transaction) described in § 327.31(a), but subject to the adjust-ment specified in paragraph (c) of this section;

(ii) The total of the amounts deter-mined under paragraph (a)(3)(iii) of this section for semiannual periods pre-ceding the semiannual period for which the determination is being made under this section; and

(iii) The amount by which the sum of the amounts described in paragraphs (a)(3)(i) and (a)(3)(ii) of this section would have increased during the pre-ceding semiannual period (other than any semiannual period beginning be-fore the date of such transaction) if such increase occurred at a rate equal to the annual rate of growth of depos-its of the acquiring, assuming, or re-sulting depository institution minus the amount of any deposits acquired through the acquisition, in whole or in part, of another insured depository in-stitution.

(4) *Deposits acquired by the institution.* As used in paragraph (a)(3)(i) of this section, the term ''deposits acquired by the institution'' means all deposits that are held in the institution ac-quired by such institution on the date of such transaction; provided, that if on or before June 30, 1997, the Corpora-tion has been appointed or serves as conservator or receiver for the ac-quired institution, such term: